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9  
10     **UNITED STATES DISTRICT COURT**  
11     **CENTRAL DISTRICT OF CALIFORNIA**

12     Robert O'Neil,  
13    Plaintiff,  
14    v.  
15     Latido Mitu Holdings, LLC,  
16    Defendant.

17     Case No:

18     **COMPLAINT FOR:**

19     **Copyright Infringement under 17**  
20     **U.S.C § 501**

21     **DEMAND FOR JURY TRIAL**

22     Plaintiff Robert O'Neil (“*Plaintiff*”), by and through its undersigned counsel,  
23     for its Complaint against Defendant Latido Mitu Holdings, LLC (“*Defendant*”)  
24     states and alleges as follows:

25     **INTRODUCTION**

26     1.     This action seeks to recover damages for copyright infringement under  
27     the Copyright Act, 17 U.S.C §501.

28     2.     Plaintiff created a photograph of former celebrity couple Camila  
29     Cabello and Shawn Mendes walking while holding hands (the “Photograph”) in  
30     which Plaintiff owns the rights and licenses for various uses including online and  
31     print publications.

3. Defendant owns and operates a website at domain wearemitu.com (the “Website”).

4. Defendant, without permission or authorization from Plaintiff, actively copied and/or displayed the Photograph on the Website and engaged in this misconduct knowingly and in violation of the United States copyright laws.

## PARTIES

5. Plaintiff Robert O'Neil is an individual who is a citizen of the State of New York and maintains a principal place of business in Queens County, New York.

6. Upon information and belief, Defendant Latido Mitu Holdings, LLC, is a California limited liability company with a principal place of business at 4712 Admiralty Way, Marina Del Rey in Los Angeles County, California.

## **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

8. This Court has personal jurisdiction over Defendant because it maintains its principal place of business in California.

9. Venue is proper under 28 U.S.C. §1331(b)(2) because Defendant does business in this Judicial District and/or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

## **FACTS COMMON TO ALL CLAIMS**

## A. Plaintiff's Copyright Ownership

10. Plaintiff is a professional photographer by trade who is the legal and rightful owner of certain photographs which Plaintiff commercially licenses.

11. Plaintiff has invested significant time and money in building Plaintiff's photograph portfolio.

12. Plaintiff has obtained active and valid copyright registrations from the United States Copyright Office (the “USCO”) which cover many of Plaintiff’s

1 photographs while many others are the subject of pending copyright applications.  
2

3 13. Plaintiff's photographs are original, creative works in which Plaintiff  
owns protectable copyright interests.  
4

5 14. On March 31, 2020, Plaintiff authored the Photograph. A copy of the  
Photograph is attached hereto as Exhibit 1.  
6

7 15. In creating the Photograph, Plaintiff personally selected the subject  
matter, timing, lighting, angle, perspective, depth, lens and camera equipment used  
8 to capture the image.  
9

10 16. On May 15, 2020, the Photograph was registered by USCO under  
Registration No. VA 2-206-865.  
11

12 17. Plaintiff created the Photograph with the intention of it being used  
commercially and for the purpose of display and/or public distribution.  
13

14 18. Plaintiff published the Photograph by commercially licensing it to  
Splash Media for the purpose of display and/or public distribution.  
15

**B. Defendant's Infringing Activity**

16 19. Defendant is the registered owner of the Website and is responsible for  
its content.  
17

18 20. Defendant is the operator of the Website and is responsible for its  
content.  
19

20 21. The Website is a key component of Defendant's popular and lucrative  
commercial enterprise.  
21

22 22. The Website is monetized in that it contains paid advertisements and,  
upon information and belief, Defendant profits from these activities.  
23

24 23. On or about April 3, 2020, Defendant displayed the Photograph on the  
Website as part of an on-line story at URL  
25 [https://wearemitu.com/wearemitu/entertainment/everyone-has-thoughts-and-](https://wearemitu.com/wearemitu/entertainment/everyone-has-thoughts-and-concerns-about-camila-cabello-and-shawn-mendes-quarantine-walks/)  
26 [concerns-about-camila-cabello-and-shawn-mendes-quarantine-walks/](https://wearemitu.com/wearemitu/entertainment/everyone-has-thoughts-and-concerns-about-camila-cabello-and-shawn-mendes-quarantine-walks/). A copy of a  
27  
28

1 screengrab of the Website including the Photograph is attached hereto as Exhibit 2.  
2

3       24. Without permission or authorization from Plaintiff, Defendant  
4 volitionally copied and/or displayed Plaintiff's copyright protected Photograph on  
the Website.

5       25. Plaintiff first observed and actually discovered the Infringement on  
6 May 18, 2020.

7       26. Upon information and belief, the Photograph was copied and displayed  
8 by Defendant without license or permission, thereby infringing on Plaintiff's  
9 copyrights in and to the Photograph (hereinafter all of the unauthorized uses set forth  
10 above are referred to as the "*Infringement*").

11       27. The Infringement includes a URL ("Uniform Resource Locator") for a  
12 fixed tangible medium of expression that was sufficiently permanent or stable to  
13 permit it to be communicated for a period of more than a transitory duration and  
14 therefore constitutes a specific infringement. *17 U.S.C. §106(5)*.

15       28. The Infringement is an exact copy of the vast majority of Plaintiff's  
16 original image that was directly copied and displayed by Defendant on the Website.

17       29. Upon information and belief, Defendant takes an active and pervasive  
18 role in the content posted on its Website, including, but not limited to copying,  
19 posting, selecting, commenting on and/or displaying images including but not  
20 limited to Plaintiff's Photograph.

21       30. Upon information and belief, Defendant directly contributes to the  
22 content posted on the Website by, *inter alia*, directly employing reporters, authors  
23 and editors as its agents, including but not limited to Cristal Mesa who is frequent  
24 contributor to the Website and upon information and belief, is compensated for such  
25 efforts.

26       31. Upon information and belief, at all material times the Employees were  
27 acting within the course and scope of their employment when they posted the  
28

1 Infringement.

2       32. Upon information and belief, at all material times the Employees were  
3 acting within the course and scope of their agency when they posted the  
4 Infringement.

5       33. Upon information and belief, the Photograph was willfully and  
6 volitionally posted to the Website by Defendant.

7       34. Upon information and belief, Defendant was aware of facts or  
8 circumstances from which the determination regarding the Infringement was  
9 apparent. Defendant cannot claim that it was not aware of the infringing activities,  
10 including the specific Infringement which form the basis of this complaint, since  
11 such a claim would amount to only willful blindness to the Infringement on the part  
12 of Defendant.

13       35. Upon information and belief, Defendant engaged in the Infringement  
14 knowingly and in violation of applicable United States copyright laws.

15       36. Upon information and belief, Defendant has the legal right and ability  
16 to control and limit the infringing activities on its Website and exercised and/or had  
17 the right and ability to exercise such right.

18       37. Upon information and belief, Defendant monitors the content on its  
19 Website.

20       38. Upon information and belief, Defendant has received a financial benefit  
21 directly attributable to the Infringement.

22       39. Upon information and belief, the Infringement increased traffic to the  
23 Website and, in turn, caused Defendant to realize an increase in its advertising  
24 revenues and/or merchandise sales.

25       40. Upon information and belief, a large number of people have viewed the  
26 unlawful copies of the Photograph on the Website.

27       41. Upon information and belief, Defendant at all times had the ability to

1 stop the reproduction and display of Plaintiff's copyrighted material.  
2

3 42. Plaintiff created the Photograph with the intention of it being used  
commercially and for the purpose of display and/or public distribution.

4 43. Defendant's use of the Photograph harmed the actual market for the  
Photograph.

5 6 44. Defendant's use of the Photograph, if widespread, would harm  
Plaintiff's potential market for the Photograph.

7 8 45. As a result of Defendant's misconduct, Plaintiff has been substantially  
harmed.

9 10 **FIRST COUNT**

11 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

12 46. Plaintiff repeats and incorporates by reference the allegations contained  
in the preceding paragraphs, as though set forth in full herein.

13 14 47. The Photograph is an original, creative work in which Plaintiff owns a  
valid copyright.

15 16 48. The Photograph is properly registered with the USCO and Plaintiff has  
complied with all statutory formalities under the Copyright Act and under  
regulations published by the USCO.

17 18 19 49. Plaintiff has not granted Defendant a license or the right to use the  
Photograph in any manner, nor has Plaintiff assigned any of its exclusive rights in  
the copyright to Defendant.

20 21 22 23 24 25 26 50. Without permission or authorization from Plaintiff and in willful  
violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and  
illegally copied, reproduced, distributed, adapted, and/or publicly displayed works  
copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its  
copyrights.

27 51. Defendant's reproduction of the Photograph and display of the

Photograph constitutes willful copyright infringement.

52. Upon information and belief, Defendant willfully infringed upon Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code, in that Defendant used, published, communicated, posted, publicized, and otherwise held out to the public for commercial benefit, Plaintiff's original and unique Photograph without Plaintiff's consent or authority, by using it on the Website.

53. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringement as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for each infringement pursuant to 17 U.S.C. § 504(c).

54. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

55. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

## **JURY DEMAND**

56. Plaintiff hereby demands a trial of this action by jury.

## **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests judgment as follows:

That the Court enters a judgment finding that Defendant has infringed on Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 *et seq.* and therefore award damages and monetary relief as follows:

a. finding that Defendant infringed Plaintiff's copyright interest in and to the Photograph by copying and displaying it without a

- 1 license or consent;
- 2 b. for an award of actual damages and disgorgement of all of
- 3 Defendant's profits attributable to the infringement as provided
- 4 by 17 U.S.C. § 504(b) in an amount to be proven or, in the
- 5 alternative, at Plaintiff's election, an award for statutory damages
- 6 against each Defendant for each infringement pursuant to 17
- 7 U.S.C. § 504(c), whichever is larger;
- 8 c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant
- 9 from any infringing use of any of Plaintiff's works;
- 10 d. for costs of litigation and reasonable attorney's fees against
- 11 Defendant pursuant to 17 U.S.C. § 505;
- 12 e. for pre-judgment interest as permitted by law; and
- 13 f. for any other relief the Court deems just and proper.

14  
15 DATED: May 18, 2023

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